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Attorneys for Defendants  
**THE HERMAN KISHNER TRUST; IRWIN KISHNER**, as Trustee for the Herman Kishner Trust; **JERRY ENGEL**, as Trustee for the Herman Kishner Trust; **BANK OF AMERICA, N.A.**, as Trustee for the Herman Kishner Trust; **MARYLAND SQUARE SHOPPING CENTER, LLC; MARYLAND SQUARE, LLC**

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

**HARTFORD FIRE INSURANCE COMPANY,**  
*et al.*,

Plaintiffs,

v.

**PACIFIC EMPLOYERS INSURANCE COMPANY; et al.**,

Defendants.

Case No. **2:13-cv-55-MMD-(PAL)**

**DEFENDANTS, THE HERMAN KISHNER TRUST; IRWIN KISHNER**, as Trustee For The Herman Kishner Trust; **JERRY ENGEL**, as Trustee For The Herman Kishner Trust; **BANK OF AMERICA, N.A.**, as Trustee For The Herman Kishner Trust; **MARYLAND SQUARE SHOPPING CENTER, LLC**; and **MARYLAND SQUARE, LLC'S ANSWER**

**DEFENDANTS, THE HERMAN KISHNER TRUST; IRWIN KISHNER**, as Trustee for the

Herman Kishner Trust; **JERRY ENGEL**, as Trustee for the Herman Kishner Trust; **BANK OF**

1 **AMERICA, N.A.**, as Trustee for the Herman Kishner Trust; **MARYLAND SQUARE SHOPPING**  
2 **CENTER, LLC** (collectively, the "Trust Defendants"); and **MARYLAND SQUARE, LLC** ("MSLLC")  
3 (collectively "Answering Defendants") by their attorneys Steven J. Parsons of LAW OFFICES OF  
4 STEVEN J. PARSONS, and Robert G. Russell, Jr. and Cecilia O. Miller of PROCOPIO, CORY,  
5 HARGREAVES AND SAVITCH, LLP, answer the Complaint for Declaratory Judgment and  
6 Reimbursement filed by Plaintiffs **HARTFORD FIRE INSURANCE COMPANY** and **HARTFORD**  
7 **ACCIDENT AND INDEMNITY COMPANY** (collectively, "Hartford") as follows:

8 Dated: Friday, March 29, 2013.

9 LAW OFFICES OF STEVEN J. PARSONS

10 /s/ Steven J. Parsons  
11 STEVEN J. PARSONS  
Nevada Bar No. 363

12 Attorney for Defendants  
13 **THE HERMAN KISHNER TRUST; IRWIN KISHNER,**  
14 **as Trustee for the Herman Kishner Trust; JERRY**  
15 **ENGEL, as Trustee for the Herman Kishner Trust;**  
16 **BANK OF AMERICA, N.A., as Trustee for the**  
**Herman Kishner Trust; MARYLAND SQUARE**  
**SHOPPING CENTER, LLC; MARYLAND SQUARE,**  
**LLC**

17 **CERTIFICATE OF SERVICE BY E-FILING**

18 I hereby certify that service of the foregoing Defendants' Answer by e-filing with the  
19 Court's CM/ECF system, duly noting that on a prior e-filing by the other parties, they have been  
20 noted as receiving copies from the court by e-filing and that they have consented to be served  
21 in that manner.

22 Dated: Friday, March 29, 2013.

23 /s/ Tana Daugherty  
24 An Employee of LAW OFFICES OF STEVEN J. PARSONS  
25  
26  
27

**NATURE OF CLAIM**

1  
2 1. Paragraph 1 of the Hartford's Complaint is a statement of the Hartford's  
3 contentions and legal conclusions to which no response is required. The Trust Defendants and  
4 MSLLC admit that the Hartford attempts to invoke jurisdiction under the Declaratory Judgment  
5 Act, but the Trust Defendants and MSLLC dispute the propriety of such jurisdiction due to a  
6 pending, underlying proceeding. The Trust Defendants and MSLLC deny any remaining  
7 allegations of Paragraph 1.

8 2. Paragraph 2 is a statement of the Hartford's contentions and legal conclusions  
9 to which no response is required. The Trust Defendants and MSLLC admit that the Hartford  
10 attempts to invoke jurisdiction under the Declaratory Judgment Act, but the Trust Defendants  
11 and MSLLC dispute the propriety of such jurisdiction due to a pending, underlying proceeding.  
12 The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 2.

13 3. Paragraph 3 is a statement of the Hartford's contentions and legal conclusions  
14 to which no response is required. The Trust Defendants and MSLLC admit that the Hartford  
15 attempts to invoke jurisdiction under the Declaratory Judgment Act, but the Trust Defendants  
16 and MSLLC dispute the propriety of such jurisdiction due to a pending, underlying proceeding.  
17 The Trust Defendants and MSLLC admit that Hartford initially agreed to participate in the  
18 defense of Maryland Square Shopping Center by paying only a share of that entity's defense  
19 costs. The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 3.

20 4. Paragraph 4 is a statement of the Hartford's contentions and legal conclusions  
21 to which no response is required. The Trust Defendants and MSLLC admit that the Hartford  
22 attempts to invoke jurisdiction under the Declaratory Judgment Act, but the Trust Defendants  
23 and MSLLC dispute the propriety of such jurisdiction due to a pending, underlying proceeding.  
24 The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 4.

**THE PARTIES**

25  
26 5. The Trust Defendants and MSLLC do not have sufficient information upon which  
27 to base a belief as to the truth or falsity of the allegations of Paragraph 5 and, based thereon,

1 deny generally and specifically each and every such allegation.

2 6. The Trust Defendants and MSLLC do not have sufficient information upon which  
3 to base a belief as to the truth or falsity of the allegations of Paragraph 6 and, based thereon,  
4 deny generally and specifically each and every such allegation.

5 7. The Trust Defendants and MSLLC do not have sufficient information upon which  
6 to base a belief as to the truth or falsity of the allegations of Paragraph 7 and, based thereon,  
7 deny generally and specifically each and every such allegation.

8 8. The Trust Defendants and MSLLC do not have sufficient information upon which  
9 to base a belief as to the truth or falsity of the allegations of Paragraph 8 and, based thereon,  
10 deny generally and specifically each and every such allegation.

11 9. The Trust Defendants and MSLLC do not have sufficient information upon which  
12 to base a belief as to the truth or falsity of the allegations of Paragraph 9 and, based thereon,  
13 deny generally and specifically each and every such allegation.

14 10. The Trust Defendants and MSLLC do not have sufficient information upon which  
15 to base a belief as to the truth or falsity of the allegations of Paragraph 10 and, based  
16 thereon, deny generally and specifically each and every such allegation.

17 11. The Trust Defendants and MSLLC do not have sufficient information upon which  
18 to base a belief as to the truth or falsity of the allegations of Paragraph 11 and, based  
19 thereon, deny generally and specifically each and every such allegation.

20 12. No response of the Trust Defendants or MSLLC is required as to the allegations  
21 of Paragraph 12.

22 13. The Trust Defendants and MSLLC deny the allegations of Paragraph 13 and  
23 affirmatively allege that when Herman Kushner established his Trust, it was known as The  
24 Herman Kushner Trust. After Mr. Kushner died, the Trust was subdivided into two trusts, The  
25 Herman Kushner Trust B-1, which existed for the benefit of his daughter Sara, and The Herman  
26 Kushner Trust B-2, which existed for the benefit of his son Michael. The only trust with an  
27 interest in Maryland Square is The Herman Kushner Trust B-1, which is the successor to The

1 Herman Kishner Trust and is a private trust created under the laws of the State of Nevada.  
2 The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 13.

3 14. The Trust Defendants and MSLLC admit the allegations of Paragraph 14.

4 15. The Trust Defendants and MSLLC admit the allegations of Paragraph 15.

5 16. The Trust Defendants and MSLLC admit that Bank of America, N.A. ("Bank of  
6 America") is a co-trustee of the Trust. The Trust Defendants and MSLLC admit that Bank of  
7 America is headquartered in Charlotte, North Carolina. The Trust Defendants and MSLLC do  
8 not have sufficient information upon which to base a belief as to the truth or falsity of the  
9 remaining allegations of Paragraph 16 and, based thereon, deny generally and specifically  
10 each and every other allegation.

11 17. The Trust Defendants and MSLLC admit that Maryland Square Shopping Center  
12 Limited Liability Company ("MSSC") is a Nevada limited liability company. The Trust  
13 Defendants and MSLLC further admit that Jerry Engel is the manager of MSSC. The Trust  
14 Defendants and MSLLC deny that Jerry Engel is a member of MSSC.

15 18. In response to the allegations of Paragraph 18, the Trust Defendants and MSLLC  
16 deny that "Herman Kishner d/b/a Maryland Square Shopping Center" is a party to this  
17 litigation. The Trust Defendants and MSLLC admit that the Kishner Trust did business as  
18 Maryland Square Shopping Center. The Trust Defendants and MSLLC further admit that Mr.  
19 Herman Kishner, who is a not a party to this litigation, also did business as "Maryland Square  
20 Shopping Center."

21 19. The Trust Defendants and MSLLC admit that Maryland Square, LLC (referred to  
22 in the Complaint as "Maryland Square"; hereinafter referred to as "MSLLC") is a Nevada limited  
23 liability company. The Trust Defendants and MSLLC admit that Paul G. Roberts, a citizen of  
24 Massachusetts, is the manager of MSLLC. The Trust Defendants and MSLLC deny that Mr.  
25 Roberts is a member of MSLLC.

26 20. The Trust Defendants and MSLLC do not have sufficient information upon which  
27 to base a belief as to the truth or falsity of the allegations of Paragraph 20 and, based

1 thereon, deny generally and specifically each and every such allegation.

2 21. The Trust Defendants and MSLLC do not have sufficient information upon which  
3 to base a belief as to the truth or falsity of the allegations of Paragraph 21 and, based  
4 thereon, deny generally and specifically each and every such allegation.

5 22. No response of the Trust Defendants or MSLLC is required as to the allegations  
6 of Paragraph 22.

7 **JURISDICTION AND VENUE**

8 23. Paragraph 23 is a statement of the Hartford's contentions and legal conclusions  
9 to which no response is required. The Trust Defendants and MSLLC deny any remaining  
10 allegations of Paragraph 23.

11 24. The Trust Defendants and MSLLC admit the allegations of Paragraph 24.

12 **FACTUAL BACKGROUND**

13 **A. The Underlying Actions**

14 25. In response to the allegations of Paragraph 25, the Trust Defendants and MSLLC  
15 affirmatively allege that Al Phillips the Cleaner, Inc. signed a lease in 1968 but did not  
16 commence operations until 1969. The Trust Defendants and MSLLC further allege that Al  
17 Phillips the Cleaner, Inc. assigned the lease thereafter to SBIC, which operated a dry cleaning  
18 business at 3659 South Maryland Parkway, Las Vegas, Nevada until August 30, 1984. The  
19 Trust Defendants and MSLLC deny generally and specifically each and every other allegation  
20 of Paragraph 25.

21 26. The Trust Defendants and MSLLC admit the allegations of Paragraph 26.

22 27. The Trust Defendants and MSLLC admit the allegations of Paragraph 27.

23 28. The Trust Defendants and MSLLC admit the allegations of Paragraph 28.

24 29. The Trust Defendants and MSLLC admit the allegations of Paragraph 29.

25 30. The Trust Defendants and MSLLC admit that the Plaintiffs' claims in the State  
26 Court Action were dismissed with prejudice on June 27, 2012. The Trust Defendants and  
27 MSLLC deny that the Third Party Complaints and Cross Complaints in the State Court Action

1 were dismissed on June 27, 2012. The Trust Defendants and MSLLC deny generally and  
2 specifically each and every other allegation of Paragraph 30.

3 31. The Trust Defendants and MSLLC admit the allegations of Paragraph 31.

4 32. In response to the allegations of Paragraph 32, the Trust Defendants and MSLLC  
5 affirmatively allege that on May 4, 2009 the NDEP filed a lawsuit titled *State of Nevada,*  
6 *Department of Conservation and Natural Resources, Division of Environmental Protection,*  
7 *Bureau of Corrective Actions v. Maryland Square Shopping Center, LLC, et al.,* Case No.  
8 3:09-CV-00231-BES-(VPC) in the United States District Court for the District of Nevada. The  
9 Trust Defendants and MSLLC admit the NDEP action seeks injunctive relief and cost recovery  
10 relating to the presence of PCE in soil and groundwater at or near the Property. The Trust  
11 Defendants and MSLLC further allege that the NDEP Action was consolidated with the Federal  
12 Court Action on August 10, 2010. The Trust Defendants and MSLLC deny generally and  
13 specifically each and every other allegation of Paragraph 32.

14 33. No response of the Trust Defendants or MSLLC is required as to the allegations  
15 of Paragraph 33.

16 **B. The Hartford Primary Policies**

17 34. The Trust Defendants and MSLLC admit the allegations of Paragraph 34.

18 35. The Trust Defendants and MSLLC admit the allegations of Paragraph 35.

19 36. No response of the Trust Defendants or MSLLC is required as to the allegations  
20 of Paragraph 36.

21 37. In response to the allegations of Paragraph 37, the Trust Defendants and MSLLC  
22 deny that they possess complete copies of the Hartford Primary Policies. The Trust Defendants  
23 and MSLLC do not have sufficient information upon which to base a belief as to the truth or  
24 falsity of the other allegations of Paragraph 37 and, based thereon, deny generally and  
25 specifically each and every such allegation.

26 38. Paragraph 38 is a statement of the Hartford's contentions and legal conclusions  
27 to which no response is required. The Trust Defendants and MSLLC deny any remaining

1     allegations of Paragraph 38.

2             39.     In response to the allegations of Paragraph 39, the Trust Defendants and MSLLC  
3     admit that the incomplete copy of the Hartford Policy numbered 53 CBP GV 6264 in their  
4     possession contains the cited language. Except as so expressly admitted, the Trust  
5     Defendants and MSLLC deny each and every allegation in Paragraph 39.

6             40.     In response to the allegations of Paragraph 40, the Trust Defendants and MSLLC  
7     deny that the incomplete copies of the Hartford Primary Policies in their possession contain  
8     the cited language. The Trust Defendants and MSLLC do not have sufficient information upon  
9     which to base a belief as to the truth or falsity of the other allegations of Paragraph 40 and,  
10    based thereon, deny generally and specifically each and every such allegation.

11            41.     In response to the allegations of Paragraph 41, the Trust Defendants and MSLLC  
12    deny that the incomplete copies of the Hartford Primary Policies in their possession contain  
13    the cited language. The Trust Defendants and MSLLC do not have sufficient information upon  
14    which to base a belief as to the truth or falsity of the other allegations of Paragraph 41 and,  
15    based thereon, deny generally and specifically each and every such allegation.

16            42.     In response to the allegations of Paragraph 42, the Trust Defendants and MSLLC  
17    admit that the incomplete copies of the Hartford Primary Policies in their possession contain  
18    the cited language. Except as so expressly admitted, the Trust Defendants and MSLLC deny  
19    each and every allegation in Paragraph 42.

20            **C.     The Hartford Umbrella Policies**

21            43.     The Trust Defendants and MSLLC admit the allegations of Paragraph 43.

22            44.     No response of the Trust Defendants or MSLLC is required as to the allegations  
23    of Paragraph 44.

24            45.     In response to the allegations of Paragraph 45, the Trust Defendants and MSLLC  
25    deny that they possess complete copies of the Hartford Umbrella Policies. The Trust  
26    Defendants and MSLLC do not have sufficient information upon which to base a belief as to  
27    the truth or falsity of the other allegations of Paragraph 45 and, based thereon, deny generally



1 and specifically each and every such allegation.

2 46. Paragraph 46 is a statement of the Hartford's contentions and legal conclusions  
3 to which no response is required. The Trust Defendants and MSLLC deny any remaining  
4 allegations of Paragraph 46.

5 47. In response to the allegations of Paragraph 47, the Trust Defendants and MSLLC  
6 admit that the incomplete copies of the Hartford Umbrella Policies in their possession contain  
7 the cited language. Except as so expressly admitted, the Trust Defendants and MSLLC deny  
8 each and every allegation in Paragraph 47.

9 48. In response to the allegations of Paragraph 48, the Trust Defendants and MSLLC  
10 admit that the incomplete copies of the Hartford Umbrella Policies in their possession contain  
11 the cited language. Except as so expressly admitted, the Trust Defendants and MSLLC deny  
12 each and every allegation in Paragraph 48.

13 49. In response to the allegations of Paragraph 49, the Trust Defendants and MSLLC  
14 admit that the incomplete copies of the Hartford Umbrella Policies in their possession contain  
15 the cited language. Except as so expressly admitted, the Trust Defendants and MSLLC deny  
16 each and every allegation in Paragraph 49.

17 50. In response to the allegations of Paragraph 50, the Trust Defendants and MSLLC  
18 admit that the incomplete copies of the Hartford Umbrella Policies in their possession contain  
19 the cited language with the exception of the term "soot." Except as so expressly admitted, the  
20 Trust Defendants and MSLLC deny each and every allegation in Paragraph 50.

21 **D. The Other Insurers' Policies**

22 51. The Trust Defendants and MSLLC admit the allegations of Paragraph 51.

23 52. The Trust Defendants and MSLLC admit the allegations of Paragraph 52.

24 53. The Trust Defendants MSLLC admit the allegations of Paragraph 53.

25 54. In response to the allegations of Paragraph 54, the Trust Defendants and MSLLC  
26 affirmatively allege that Continental issued a primary insurance policy to "Shapiro Brothers  
27 Investments DBA: Al Phillips the Cleaner" numbered CBP 1065585 for the policy period

beginning August 1, 1984 and ending August 1, 1985. The Trust Defendants and MSLLC further allege that Continental issued an umbrella liability policy to “Shapiro Brothers Investments DBA: Al Phillips the Cleaner” numbered LX CBP 1065585 for the policy period beginning August 1, 1984 and ending August 1, 1985.

55. The Trust Defendants and MSLLC admit the allegations of Paragraph 55.

56. In response to the allegations of Paragraph 56, the Trust Defendants and MSLLC admit that Granite State issued a primary insurance policy to “Al Phillips the Cleaner, Inc. and Shapiro Brothers Investment Corp.” that was assigned Policy Number POP 17-05-36 for the policy period beginning June 1, 1980 and ending June 1, 1983.

**RESPONSE TO COUNT I**

(Declaratory Judgment – against the Shapiro Defendants, The Trust Defendants and MSLLC)

57. By way of response to the allegations of Paragraph 57, the Trust Defendants and MSLLC re-allege and incorporate herein by reference the responses to the allegations of Paragraphs 1 through 56.

58. The Trust Defendants and MSLLC admit the allegations of Paragraph 58.

59. The Trust Defendants and MSLLC deny the allegations of Paragraph 59.

60. The Trust Defendants and MSLLC deny the allegations of Paragraph 60.

61. The Trust Defendants and MSLLC deny the allegations of Paragraph 61.

62. In response to the allegations of Paragraph 62, the Trust Defendants and MSLLC admit that certain of the incomplete copies of the Hartford Primary Policies and the Hartford Umbrella Policies in their possession define occurrence, in relevant part, as “an accident ... which results ... in property damage neither expected nor intended from the standpoint of the insured.” The Trust Defendants and MSLLC deny that any property damage alleged in the Underlying Actions was or is expected or intended.

63. The Trust Defendants and MSLLC deny the allegations of Paragraph 63.

64. No response of the Trust Defendants or MSLLC is required as to the allegations of Paragraph 64.

65. Paragraph 65 is a statement of the Hartford's contentions and legal conclusions to which no response is required. The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 65.

66. The Trust Defendants and MSLLC deny the allegations of Paragraph 66.

67. Paragraph 67 is a statement of the Hartford's contentions and legal conclusions to which no response is required. The Trust Defendants and MSLLC admit that the Hartford attempts to invoke jurisdiction under the Declaratory Judgment Act, but the Trust Defendants and MSLLC dispute the propriety of such jurisdiction due to a pending, underlying proceeding. The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 67.

**RESPONSE TO COUNT II**  
(Declaratory Judgment Against MSLLC)

68. By way of response to the allegations of Paragraph 68, Defendant MSLLC re-alleges and incorporates herein by reference the responses to the allegations of Paragraphs 1-67. No response of the Trust Defendants is required as to the allegations of Paragraph 68.

69. In response to the allegations of Paragraph 69, Defendant MSLLC admits that certain of the incomplete copies of the Hartford Primary and Umbrella Policies in its possession contain or incorporate the cited language. No response of the Trust Defendants is required as to the allegations of Paragraph 69.

70. In response to the allegations of Paragraph 70, Defendant MSLLC admits that certain of the incomplete copies of the Hartford Primary and Umbrella Policies in its possession contain the cited language. No response of the Trust Defendants is required as to the allegations of Paragraph 70.

71. Paragraph 71 is a statement of the Hartford's contentions and legal conclusions to which no response is required. Defendant MSLLC denies any remaining allegations of Paragraph 71. No response of the Trust Defendants is required as to the allegations of Paragraph 71.

72. In response to the allegations of Paragraph 72, Defendant MSLLC does not have

1 sufficient information upon which to base a belief as to the truth or falsity of allegations  
2 regarding the records of the Nevada Secretary of State, which records are the best evidence  
3 of their content. Defendant MSLLC admits that it filed Articles of Incorporation on September  
4 6, 2005 with the Nevada Secretary of State. Defendant MSLLC further admits that the  
5 Articles it filed did not reference information on any alleged successors or any relation to  
6 "Maryland Square Shopping Center." Except as so expressly admitted, Defendant MSLLC  
7 denies each and every allegation in Paragraph 72. No response of the Trust Defendants is  
8 required as to the allegations of Paragraph 72.

9 73. In response to the allegations of Paragraph 73, Defendant MSLLC admits that  
10 the incomplete copies of the Hartford Primary and Umbrella Policies in its possession indicate  
11 an expiration date of August 1, 1984. Defendant MSLLC further admits that it was formed in  
12 2005. Except as so expressly admitted, Defendant MSLLC denies each and every allegation  
13 in Paragraph 73. No response of the Trust Defendants is required as to the allegations of  
14 Paragraph 73.

15 74. In response to the allegations of Paragraph 74, Defendant MSLLC admits that  
16 the incomplete copies of the Hartford Primary and Umbrella Policies in its possession indicate  
17 an expiration date of August 1, 1984. Defendant MSLLC further admits that it acquired the  
18 Property in 2005. Except as so expressly admitted, Defendant MSLLC denies each and every  
19 allegation in Paragraph 74. No response of the Trust Defendants is required as to the  
20 allegations of Paragraph 74.

21 75. Paragraph 75 is a statement of the Hartford's contentions and legal conclusions  
22 to which no response is required. Defendant MSLLC admits that the Hartford attempts to  
23 invoke jurisdiction under the Declaratory Judgment Act, but Defendant MSLLC disputes the  
24 propriety of such jurisdiction due to a pending, underlying parallel proceeding. Defendant  
25 MSLLC denies any remaining allegations of Paragraph 75. No response of the Trust  
26 Defendants is required as to the allegations of Paragraph 75.

27 ...

**RESPONSE TO COUNT III**

(Claim for Reimbursement Against the Shapiro Defendants)

76. By way of response to the allegations of Paragraph 76, the Trust Defendants and MSLLC re-allege and incorporate herein by reference the responses to the allegations of Paragraphs 1-75.

77. No response of the Trust Defendants or MSLLC is required as to the allegations of Paragraph 77.

78. No response of the Trust Defendants or MSLLC is required as to the allegations of Paragraph 78.

79. No response of the Trust Defendants or MSLLC is required as to the allegations of Paragraph 79.

**RESPONSE TO COUNT IV**

(Claim for Reimbursement Against the Trust Defendants)

80. By way of response to the allegations of Paragraph 80, the Trust Defendants and MSLLC re-allege and incorporate herein by reference the responses to the allegations of Paragraphs 1-79.

81. In response to the allegations of Paragraph 81, the Trust Defendants and MSLLC admit that the Hartford agreed to participate in the defense of Maryland Square Shopping Center in the Underlying Actions by paying only a share of that entity's defense costs and subject to a reservation of rights, including the right to seek reimbursement. The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 81.

82. The Trust Defendants and MSLLC deny the allegations of Paragraph 82.

83. Paragraph 83 is a statement of the Hartford's contentions and legal conclusions to which no response is required. The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 83.

...

...

**RESPONSE TO COUNT VI<sup>1</sup>**

(Claim for Reimbursement Against the Other Insurers)

84. In response to the allegations of Paragraph 84, the Trust Defendants and MSLLC re-allege and incorporate herein by reference the responses to the allegations of Paragraphs 1-83.

85. In response to the allegations of Paragraph 85, the Trust Defendants and MSLLC admit that Hartford agreed to participate in the defense of Maryland Square Shopping Center with respect to the Underlying Actions by paying only a share of that entity's defense costs and subject to a reservation of rights, including the right to seek reimbursement. The Trust Defendants and MSLLC specifically deny that Hartford agreed to defend the Kishner Trust, Irwin Kishner, Jerry Engel, Bank of America and MSLLC. The Trust Defendants and MSLLC do not have sufficient information upon which to base a belief as to the truth or falsity of the other allegations of Paragraph 85 and, based thereon, deny generally and specifically each and every such allegation.

86. No response of the Trust Defendants or MSLLC is required as to the allegations of Paragraph 86.

**RESPONSE TO COUNT VII**

(Alternative Claim for Declaratory Relief Against the Other Insurers,  
Trust Defendants and Shapiro Defendants)

87. In response to the allegations of Paragraph 87, the Trust Defendants and MSLLC re-allege and incorporate herein by reference the responses to the allegations of Paragraphs 1-86.

88. Paragraph 88 is a statement of the Hartford's contentions and legal conclusions to which no response is required. The Trust Defendants and MSLLC deny any remaining allegations of Paragraph 88.

89. Paragraph 89 is a statement of the Hartford's contentions and legal conclusions

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<sup>1</sup>This Count was incorrectly numbered in the Complaint, however, for consistency, the Trust Defendants and MSLLC will adopt this numbering, and omit any Count V.

1 to which no response is required. The Trust Defendants and MSLLC deny any remaining  
2 allegations of Paragraph 89.

3 **AFFIRMATIVE DEFENSES**

4 As and for affirmative defenses to the Complaint on file herein and each cause of action  
5 therein, these answering Defendants allege that:

6 **FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim for Relief)

7  
8 The Complaint fails to state a claim upon which relief can be granted against these  
9 answering Defendants.

10 **SECOND AFFIRMATIVE DEFENSE**

(Assumption of Risk)

11  
12 Plaintiffs, with full knowledge of all risks attendant thereto, voluntarily and knowingly  
13 assumed all risks attendant upon said conduct referred to in Plaintiffs' Complaint and all  
14 purported damages alleged to be related thereto and proximately caused thereby.

15 **THIRD AFFIRMATIVE DEFENSE**

(Failure to Mitigate Damages)

16  
17 Plaintiffs failed, neglected and refused to mitigate their alleged damages and therefore  
18 are barred from recovery or, alternatively, Plaintiffs' recovery must be reduced to the extent of  
19 their failure to mitigate.

20 **FOURTH AFFIRMATIVE DEFENSE**

(Estoppel)

21  
22 The Complaint herein is barred by reasons of acts, omissions, representations and  
23 course of conduct by Plaintiffs upon which these answering Defendants were led to rely to their  
24 detriment, thereby barring under the Doctrine of Estoppel any causes of action asserted by the  
25 Plaintiffs.

26 ...

27 ...

1 **FIFTH AFFIRMATIVE DEFENSE**  
2 (Laches)

3 Plaintiffs' Complaint is barred by the equitable Doctrine of Laches.

4 **SIXTH AFFIRMATIVE DEFENSE**  
5 (Waiver)

6 Plaintiffs have waived each and every alleged claim against these answering Defendants  
7 as set forth in the Complaint. Plaintiffs have engaged in conduct and activities sufficient to  
8 constitute a waiver of any purported rights or entitlements as set forth in the Complaint.

9 **SEVENTH AFFIRMATIVE DEFENSE**  
10 (Unclean Hands)

11 By virtue of Plaintiffs' unlawful, immoral, careless, negligent and other wrongful  
12 conduct, Plaintiffs should be barred from recovering against these answering Defendants under  
13 the equitable doctrines of Unclean Hands and of *in pari delicto*.

14 **EIGHTH AFFIRMATIVE DEFENSE**  
15 (Statute of Limitations)

16 Plaintiffs' causes of action are time barred under all applicable statutes of limitations.

17 **NINTH AFFIRMATIVE DEFENSE**  
18 (Duty to Defend)

19 Plaintiffs' claims for relief and each of them are barred in whole or in part by the terms  
20 of the Hartford Primary and Umbrella Policies, which obligate the Plaintiffs to provide a defense  
21 to the Trust Defendants in the Underlying Actions.

22 **TENTH AFFIRMATIVE DEFENSE**  
23 (Duty to Indemnify)

24 Plaintiffs' claim for relief and each of them are barred in whole or in part by the terms  
25 of the Hartford Primary and Umbrella Policies, which obligate the Plaintiffs to indemnify the  
26 Trust Defendants with respect to the Underlying Actions.

27 ...



**ELEVENTH AFFIRMATIVE DEFENSE**  
(Bad Faith)

Plaintiffs have acted in bad faith in connection with the acts and events alleged in the Complaint, and this bad faith extinguished any relief sought in any of the Plaintiffs' alleged causes of action.

**TWELFTH AFFIRMATIVE DEFENSE**  
(Prematurity)

The Complaint is premature to the extent that it seeks a determination as to the Plaintiffs' duty to indemnify the Trust Defendants as to pending litigation. Plaintiffs' Complaint is therefore barred in whole or in part because its adjudication would operate to prejudice the interests of the Trust Defendants in the Underlying Actions.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
(Accord & Satisfaction)

Plaintiffs' Complaint is barred, in whole or part, by the equitable doctrine of accord and satisfaction.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
(Additional Affirmative Defenses)

These answering Defendants presently have insufficient knowledge or information upon which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses available. Accordingly, these answering Defendants reserve the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

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**PRAYER FOR RELIEF**

Wherefore, Trust Defendants and MSLLC pray that Plaintiffs take nothing by their Complaint herein, that Trust Defendants and MSLLC be awarded their costs of suit and for such other and further relief as the Court deems just and proper.

Dated: Friday, March 29, 2013.

LAW OFFICES OF STEVEN J. PARSONS

/s/ Steven J. Parsons

**STEVEN J. PARSONS**

Nevada Bar No. 363

Attorney for Defendants

**THE HERMAN KISHNER TRUST; IRWIN KISHNER,**  
as Trustee for the Herman Kushner Trust; **JERRY**  
**ENGEL,** as Trustee for the Herman Kushner Trust;  
**BANK OF AMERICA, N.A.,** as Trustee for the  
Herman Kushner Trust; **MARYLAND SQUARE**  
**SHOPPING CENTER, LLC; MARYLAND SQUARE,**  
**LLC**